

### **REMARKS**

This Amendment and the following remarks are intended to fully respond to the Office Action mailed January 9, 2008 (hereinafter the "Action"). In that Action, claims 1, 4, 6-8, 12 and 25 were rejected. More specifically, claims 1, 6, 7, 12 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over by Hirsch et al (WO 97/25682) (hereinafter "Hirsch") in view of Leamon (USPN 6,970,829) and claims 4 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over by Hirsch et. al (WO 97/25682) (hereinafter "Hirsch") in view of Leamon (USPN 6,970,829) in further view of Rosse (USPN 6,640,212) (hereinafter "Rosse").

In this response, claims 1, 7 and 12 have been amended; claim 6 has been canceled; and no claims have been added. Claims 1, 4, 7-8, 12 and 25 are now pending in this application, where claim 1 is an independent claim and all other pending claims depend from claim 1.

### **Interview Summary**

Applicants thank the Examiner for his time in the in-person interview held on March 11, 2008. During the interview, a demonstration of an embodiment of the invention was shown. Also, the cited art as it relates to the claims was discussed and potential claim amendments were generally discussed. It was suggested that some claim amendments could help move the case towards allowability. Applicants further thank the Examiner for his time on April 6, 2008, wherein some draft claim amendments were discussed and considered. No agreements were made.

### **Claim Rejections – 35 U.S.C. § 103(a)**

Claims 1, 7, 12 and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hirsch et al (WO 97/25682) (hereinafter "Hirsch") in view of Leamon (USPN 6,970,829).

Amended Claim 1 recites a method of scheduling a plurality of patients and a plurality of employees in a health care environment, wherein at least two patients receive treatment during a

predetermined time period comprising, *inter alia*, scheduling employees in response to the distributed employee time requirements. The claim further recites a process of dividing the day into intervals and the scheduling employees in providing care to patients based on requirements in time intervals. Importantly, the method of claim 1 (and all its dependent claims) involve displaying the scheduling information on a per-interval basis such that a user can quickly and easily determine peaks and valleys in scheduling employees and patients. Such a determination allows the user to modify patient schedules, thereby reducing the peaks and valleys and effectively improving scheduling efficiency. Furthermore, the scheduling process also involves rounding up an amount of employees from a fractional amount to a whole interger when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients, and counting employees at the fractional number based at least upon the employees' training resulting in scheduling employees in non-whole number increments.

Additionally, amended claim 1 further clarifies that each employee is evaluated to determine whether such employee can be counted as a full-time patient care giver, i.e., their patient care capability is determined. Such an evaluation allows for the system to count employees at fractional values for all intervals over the course of a shift. In such an embodiment, the invention allows flexibility in scheduling based on employees' true capabilities that may be less than others due to training or other non-patient care duties, such as management responsibilities.

In contrast, and as agreed to by the Examiner, Hirsch does not disclose many of the features now present in the pending claims, including but not limited to determining employees' patient care capability or the rounding up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients. For example, Hirsch merely discloses allowing a surgeon to select a time interval for starting a medical procedure. (*See* Hirsch page 15, lines 21-

22.) Accordingly, Hirsch discloses assigning a whole person (the surgeon) to a time interval. Consequently, Hirsch fails to disclose counting employees at fractional increments.

Leamon does not make up for the inadequacies of Hirsch. Leamon relates to call center employee staffing. While it refers to identifying skill sets for employees that handle incoming calls, it does not address the needs and issues of a patient-care center. It is fundamentally different in attempting to schedule employees in such a way so that calls are handled by the right person while other callers do not wait on hold for too long as compared to scheduling patient care givers in a patient care center. Patient care centers must account for worst-case conditions where patients under the care of the center can and will receive all the care they need when they need it.

Moreover, the Examiner cited section 1.2.1.3.1 of Leamon as disclosing the representation of employees as a fractional value. (See Action p. 4). As best as can be determined, Leamon describes the use of net staff arrays which provide difference values in the form of fractions but these are different from the claimed application. Leamon states "for each time interval to be scheduled, the number of agents (usually a fractional amount) over (if positive) or under (if negative) the total needed to cover all of or a portion of agent requirements for that interval." (Col. 16, ll 52-55). This passage actually refers to "difference values" for what is required for the interval as compared to the actually scheduled number of agents. Thus, from what is understood, if the system requires four agents and three are scheduled then the net staff array has a value of negative "0.25" but if there were five people scheduled it would have a value of positive "0.20". (See Col. 16, ll 57-64 which states "[t]hus, the net staff array contains values representing the difference between a currently-scheduled staff and an amount of staff needed to handle the requirements during the interval..."). These are fractional numbers, but these are very different from what is claimed in the present application. The fractional numbers in the present application are not based on difference values compared to actual scheduling but instead relate to individual employees capabilities, i.e., those that cannot provide direct patient care over all intervals may be counted as a fraction for each interval.

Given these differences, among others, it is believed that claim 1 is patentable over the cited art. Applicants respectfully request withdrawal of the rejection.

Dependent claims 4, 7, 8, 12 and 25 are also allowable at least for the reasons described above regarding independent claim 1, and by virtue of their respective dependencies upon independent claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of dependent claims 4, 7-8, 12 and 25.

**CONCLUSION**

It is believed that no further fees are due with this Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

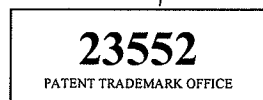
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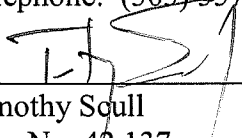
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